The Planning Inspectorate

Appeal Decision

Hearing held on 8 July 2014
Site visit made on 8 July 2014

by Jonathan Hockley BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 August 2014

Appeal Ref: APP/A2525/A/14/2217925
Ye Olde Dun Cow, 164 Barrier Bank, Cowbit, Spalding PE12 6AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Market Homes Ltd against the decision of South Holland District Council.
- The application Ref H01-0553-13, dated 25 June 2013, was refused by notice dated 31 October 2013.
- The development proposed is residential development.

Decision

1. The appeal is allowed and planning permission is granted for residential development at Ye Olde Dun Cow, 164 Barrier Bank, Cowbit, Spalding PE12 6AL in accordance with the terms of the application, Ref H01-0553-13, dated 25 June 2013, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) No development shall take place until a schedule of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority, with samples to be provided if required. Development shall be carried out in accordance with the approved details.

   3) The development hereby permitted shall be carried out in accordance with the following approved plans: Site and Location Plans SE-160 Dwg No 10 Rev B; Plans, Elevations and Sections Plots 1, 2 & 3 SE-160 Dwg No 11; Plans, Elevations and Sections Plots 4, 5, 6, 7, 8 & 9 SE-160 Dwg No 12; Street Scenes SE-160 Dwg No 13.

   4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include; means of enclosure and boundary treatments; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. refuse storage areas, signs, lighting etc); details of soft landscaping.

5) The hard and soft landscape works approved under Condition 4 shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme previously agreed in writing with the local planning authority.

6) The development hereby permitted shall be carried out fully in accordance with the measures set out in the Flood Risk Assessment, Final Report August 2013 (prepared by Geoff Beel Consultancy). The recommendations contained within the Assessment shall be fully implemented prior to occupation of the approved scheme.

7) No development shall take place until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the local planning authority (LPA) and until the measures in that scheme have been implemented. The scheme shall include the following:

   i) a desk top study to identify and evaluate all potential sources of contamination and the impacts on land and controlled waters relevant to the site. The study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. The study shall also set objectives for intrusive site investigation works/quantitative risk assessment, or state if none required. Two copies of the study shall be submitted to the LPA immediately upon completion.

   ii) If identified as being required by the desk top study, a site investigation shall be carried out to fully characterise the nature and extent of any land contamination and or pollution of controlled waters. It shall specifically include a risk assessment that adopts the source-pathway-receptor principle, so that any potential risks are adequately assessed taking into account the sites existing status and the proposed new use. Two full copies of the site investigation and findings shall be forwarded to the LPA immediately upon completion.

   iii) Should the details in part (ii) be carried out, a written method statement detailing the remediation requirements for land contamination and or pollution of controlled waters affecting the site shall be submitted to and approved in writing by the LPA, and all requirements shall be implemented and completed to the satisfaction of the LPA prior to any development on site. Subsequently, if during redevelopment contamination not previously considered is identified then the LPA shall be notified immediately and no further work on site carried out until a method statement detailing a scheme to deal with the suspected contamination has been submitted to and agreed in writing by the LPA.

   iv) Should the details in parts (ii) and (iii) be carried out, two full copies of a final report shall be submitted to and approved in writing by the LPA. The report shall verify that the required works regarding contamination have been carried out in accordance with the approved method statement(s). Post remediation sampling

and monitoring results shall be included in the final report to demonstrate that the required remediation has been fully met.

Application for costs

2. At the Hearing an application for costs was made by Market Homes Ltd against South Holland District Council. This application is the subject of a separate Decision.

Main Issues

3. Based on all that I have seen, read and the discussions at the Hearing, I consider that the main issues in this appeal are:

   - Whether it is appropriate for the use of the site to be limited to that of a public house, and if it is not appropriate, would residential development of the site be acceptable in principle.

   - The viability of the construction of a public house and the use of that public house on the appeal site.

Reasons

The use of the site

4. The proposal site has a fairly long and detailed history. The public house (the pub) of Ye Olde Dun Cow ceased trading in around March-April 2012, and then stood vacant until November 2012 when the property suffered extensive fire damage. The appeal site was put on the Council's register of Assets of Community Value (ACV) in September 2013, and the application that is the subject of this appeal was refused in October 2013. Subsequently, and following consent from the Council, the remains of the pub were demolished in March 2014 and the site was delisted as an ACV in April 2014.

5. At present therefore the site comprises of a cleared brownfield site. Various court judgements have established the general principle that where a use requires a building in which to operate, that use cannot survive the destruction of the building and there is no continuing right to use the site for that purpose after the building has been removed. Demolition represents a new chapter in the planning history of the site and it now has a 'nil' use. In this case, I consider that this is what has occurred at the appeal site. The removal of the site from the Council's register of ACV has reinforced this view. Policy EC3 of the South Holland Local Plan 2006 (the Local Plan), which concerns proposals for the redevelopment and or change of use from employment uses to non-employment uses does not therefore apply in this case.

6. Policy SG3 of the Local Plan sets out the settlement hierarchy of the District. Cowbit is defined in this hierarchy as a group centre. Policy HS6 of the Local Plan states that residential development will be permitted on suitable sites in group centres, where it is within the defined settlement boundaries, on brown field land, and where it would constitute infilling.

7. The Statement of Common Ground (SoCG) confirms that the site is in a sustainable and accessible location, within the defined settlement limit of Cowbit, and that the use of previously developed land within the defined settlement boundary is acceptable in principle. The appeal site has residential development on three sides, and at present constitutes a gap in the street

scene of Barrier Bank. The development of the site would therefore, I consider, constitute infilling. Furthermore the SoCG confirms the Council's view that there are no material objections relating to any planning issue related to the scheme, other than the issue of the viability of the pub.

8. I therefore conclude that it is not appropriate for the use of the site to be limited to that of a public house and that residential development of the site is acceptable in principle. The proposal would comply in this respect with policy HS6. In the context that the site has a 'nil' use the proposal would not conflict with the aims of Local Plan Policy SG1 in so far as it seeks to ensure that the quality of life for residents is unimpaired.

Viability of the construction and use of a public house

9. Ye Olde Dun Cow ceased trading in April 2012. The detailed viability assessment submitted by the appellant considers that there is no realistic prospect of the pub being rebuilt, re-opened and returning to its former use. Accounts within the assessment demonstrate a business whose profits steadily reduced in the years from 2006 to 2011, with net losses recorded in 2009, 2010 and 2011. It is clear therefore why the pub ceased trading in early 2012.

10. Various reasons are put forward as to why the pub lost money during its later years, including aspects common to the general pub trade, such as supermarket alcohol sales, the effects of the smoking ban and reductions in customer demand. One specific local factor was also cited as the opening of the Cowbit bypass in 2010. In this respect the Environmental Statement (ES) supporting the road scheme stated that "a potential negative impact of the improvement scheme is that it would divert 'passing' trade and could therefore impact on the viability of local services such as the local pub and petrol station". During my site visit I noted that Barrier Bank appeared to be a very quiet road and I therefore consider that the bypass has had the effects that the ES predicted.

11. Various representations consider that the previous landlord of the pub was, in part, responsible for the demise of the pub. In this respect I note that the viability assessment was prepared with the average 'landlord' in mind and comes to the conclusion that a pub would not be viable in this location. The assessment does not preclude an exceptional landlord who drives a business forward possibly making more profit off the site but still considers that such a business would be on the limits of viability.

12. The reconstruction of the pub (including land value) would cost around £750,000, an amount that was not disputed by the Council at the Hearing. I recognise the concerted efforts of the Campaign to save Ye Olde Dun Cow, and its detailed evidence. However, in this context I note that the figures proposed by the Campaign are not dissimilar to those included in the appellant's viability assessment. A build cost of around £800,000 is suggested, possibly rising to £1.25million. The Campaign also suggests a mature turnover of around £150,000, compared to £130,000 predicted by the appellant, although they also predict a turnover of around £150,000 could be achieved by an exceptional operator.

13. I also note that any proposed public house use that the Campaign may institute would be a community use and so would not necessarily need to make a profit. However, even with this proviso, profit would still presumably be

required to make improvements, replace equipment and furnishings and so on. This seems to me to demonstrate that the economic case for the use of the site as a pub, albeit one including other community and social uses, would be difficult to achieve and has not been clearly demonstrated on the basis of the evidence before me.

14. Representations were submitted on behalf of CAMRA, including a public house viability test. However, this test appears to be based on a pro-forma, includes no financial information and contains little detailed evidence. I therefore place little weight on this submission.

15. Representations were made both in writing and at the hearing from an interested party who states that their company made a bid for the site previously with the express purpose as running it as a public house. I do not doubt the veracity of this claim or the financial position of the business making the claim. However, this does not to my mind overcome the difficulties of running a viable pub use on the site as shown, by the evidence submitted.

16. At the hearing a proposal to construct a Brewers Fayre pub reasonably close to Cowbit was brought up. However, I understand that this proposal is a planning application at present and no decision has been taken on this application. As such I have given this proposal little weight in my decision.

17. The village of Moulton Chapel is close to Cowbit and has a similar population. This village has two pubs in operation at present. However, these pubs appear to have been long established and so presumably have a loyal core of customers. A new pub on the Ye Olde Dun Cow site 'starting from scratch' would find it harder to attract and retain a similar loyal core. I also note that one of the pubs in Moulton Chapel has been up for sale since at least March of this year.

18. I therefore conclude that the construction of a public house and the use of that public house on the appeal site has been shown to be unviable. Notwithstanding my conclusions earlier on the 'nil' use of the site, the proposal would also comply in this respect with Paragraph 70 of the National Planning Policy Framework (the Framework) which states that planning decisions should guard against the unnecessary loss of valued facilities and services.

Other matters

19. Representations were received concerning the character and appearance of the area, amongst perceptions that the proposed 9 houses would constitute an overdevelopment of the site and result in a cramped form and layout. However, I consider that the proposed scheme allows the full use of the site and provides for reasonable areas for the rear gardens of the proposed dwellings, particularly when considering the area in the centre of the site required to be clear of development due to the sewer easement. The proposal would also not look out of place within the local environment, given the proximity of Ash Tree Drive just to the north of the site which has similar size properties and layout.

20. The proposal does not include affordable housing. A viability assessment has been carried out for the site by Turner Morum, which concludes that affordable housing on the site would not be viable, as the full use of the site for market housing would generate 12.6% profit; lower than the industry norm of 20%.

The Council agree in the SoCG that the development would not be able to support affordable housing. I agree with these conclusions and consider that this assessment also lends weight to any doubts of any other possible uses being viable on the site, including other proposals for the site such as mixed use schemes with a small pub and reduced numbers of houses.

21. Local residents raise the issue of flooding on the appeal site. However, I note in this context the raised road of Barrier Bank forms the local flood barrier, and the conclusions of the submitted Flood Risk Assessment (FRA). The Environment Agency raises no objections to the proposal, subject to the recommendations of the FRA being carried out, and based on all that I have read and seen I have no reason to disagree with this view.

22. Residents to the rear of the appeal site raise concerns over possible issues of overlooking from the proposed houses. According to the Council's figures the rear elevations of plots 4-9 of the proposal would be around 21 to 25m from the rear elevations of the bungalows located on The Pastures. This is representative of many back to back figures and given the boundary treatments shown in the proposed plans I do not consider that the living conditions of the occupiers of these properties would be adversely affected by the proposal.

23. Representations also raise concerns over highway matters. However, the site has a well established entrance and exit at present and the Highway Authority raise no objections to the scheme. The proposal includes two parking spaces per dwelling and given the size of the proposed units this does not seem to me to be unreasonable. I do not consider therefore that such a provision of parking spaces would lead to excessive car parking in neighbouring estates, or on Barrier Bank itself.

24. The appellant has submitted a signed Unilateral Undertaking to provide a financial contribution towards community facilities within the local area, and for a 'priority period' for local purchasers of the proposed houses for 13 weeks from the first marketing of the properties. However, I have not been provided with any development plan policies relating to such matters. Whilst I accept that the undertaking was made in good faith, and that the measures in the document are related directly to, and are fairly and reasonably related in scale and kind to the development proposed, I consider that the measures are not necessary to make the proposal acceptable in planning terms. As such the undertaking does not accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. I therefore have not taken account of the Undertaking in my decision.

Conditions

25. Other than the condition concerning compliance with the FRA as mentioned above, conditions are also imposed covering implementation in terms of time and plans. Such conditions are appropriate in the interests of proper planning and for the avoidance of doubt. I also agree with the proposal for a schedule of materials to be submitted, in the interests of the character and appearance of the area, and for a contamination scheme to be submitted, given the brownfield nature of the site and in the interests of the protection of the environment.

26. At the hearing, landscaping conditions were also discussed and agreed to require the submission of a scheme for hard and soft landscaping to be submitted to and approved by the Council. I have imposed such conditions, in the interests of the character and appearance of the surrounding area and of the proposal itself.

Conclusions

27. I have concluded that it is not appropriate for the use of the site to be limited to that of a public house and that residential development of the site is acceptable in principle. I have also found that that the construction of a public house and the use of that public house on the appeal site has been shown to be unviable.

28. I note the strong community support for the former pub use to be retained, and agree that the Framework supports the retention and development of local public services and facilities. However, in this case given that I have found that the site has a 'nil' use at present, and the strong evidence submitted concerning the viability of a public house on site, I consider that the appeal should be allowed.

Jon Hockley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Escott BA DipTP MRTPI	Robinson Escott Planning LLP
Nigel Astbury	Christie & Co
Thomas Hegan MRICS	Turner Morum
Wayne Delahoy	Appellant, Market Homes Ltd

FOR THE LOCAL PLANNING AUTHORITY

R I Fidler BA(Hons) DipTP MRTPI	South Holland District Council

INTERESTED PERSONS:

Peter Mandell	Peter Lind and Company
Val Day	Near neighbour
Jonathan Matthews	Chair, Campaign to save Ye Olde Dun Cow
Richard Fairman	Councillor, Lincolnshire County Council and local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Appellant's rebuttal to Council's Statement of Case & Cowbit Amenities Group Objection.